

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

CYNTHIA R. THOMPSON,)
)
Plaintiff,)
)
) CIV-13-1268-HE
v.)
)
SHARON HARRISON, et al.,)
)
Defendants.)

SUPPLEMENTAL REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, filed a handwritten Complaint in this 42 U.S.C. § 1983 action on December 2, 2013, concerning the conditions of her confinement. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

The undersigned reviewed the pleadings filed by Plaintiff, and on December 4, 2013, entered an Order notifying Plaintiff that the documents were deficient because she had not submitted a motion requesting leave to proceed *in forma pauperis* or paid the full filing fee and because the Complaint was not filed on the proper 42 U.S.C. § 1983 form. Plaintiff was advised that she had until December 23, 2013, to cure the stated deficiencies, and she was further advised that if the deficiencies were not timely cured the undersigned would recommend the dismissal of the action without prejudice.

Thereafter, Plaintiff did not file any pleadings or cure the stated deficiencies. On

January 7, 2014, the undersigned entered a Report and Recommendation recommending that the action be dismissed without prejudice due to Plaintiff's failure to comply with the Court's orders. Plaintiff objected to the Report and Recommendation. In an Order entered January 28, 2014, United States District Judge Heaton granted Plaintiff an extension until February 13, 2014, to comply with the undersigned's previous Order by (1) paying the filing fee or filing an *in forma pauperis* application and (2) filing her complaint using the proper form. The action was dismissed without prejudice on February 24, 2014, because Plaintiff did not comply with the Court's January 28, 2014 Order. However, the judgment was vacated and the action reopened by Order entered February 27, 2014. Plaintiff was directed to complete an *in forma pauperis* application and file an amended complaint on the appropriate form. Plaintiff thereafter filed an amended complaint (Doc. # 15) and a motion for leave to proceed *in forma pauperis* (Doc. # 17).

Following re-referral of the matter to the undersigned Magistrate Judge, the pleadings were reviewed and on April 16, 2014, the undersigned entered an Order granting Plaintiff's motion for leave to proceed *in forma pauperis* and giving Plaintiff until May 5, 2014, to pay an initial partial filing fee of \$7.42. Order Granting Leave to Proceed In Forma Pauperis (Doc. # 19).

On May 15, 2014, Plaintiff filed a notice of change of address indicating she was no longer confined at the Kate Barnard Community Corrections Center. The Order (Doc. # 19) was remailed to Plaintiff's new address. However, to this date, Plaintiff has not complied with the Order requiring her to pay an initial partial filing fee of \$7.42 or requested an

extension of time to comply.

Plaintiff's lack of interest in complying with the Court's Orders and failure to pay the required partial filing fee, combined with the Court's attempt to manage and control its caseload, warrant a dismissal of the cause of action without prejudice. See Gripe v. City of Enid, Okla., 312 F.3d 1184, 1188 (10th Cir. 2002)(Federal Rules of Civil Procedure authorize sanctions, including dismissal, for failure to comply with court's orders). See also Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center, 492 F.3d 1158, 1161 n.2 , 1162 (10th Cir. 2007)(*sua sponte* dismissal for failure to comply with court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing action without prejudice for failure to comply).

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's cause of action be DISMISSED without prejudice for lack of compliance with the Court's orders. Plaintiff is advised of the right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by _____ June 24th _____, 2014, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Supplemental Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.”).

This Supplemental Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 4th day of June, 2014.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE